



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

February 27, 2007

CERTIFIED MAIL 7005 3110 0003 6266 0066
RETURN RECEIPT REQUESTED

Mr. Douglas O. Bean
Key Business Executive
Charlotte-Mecklenburg Utilities
5100 Brookshire Boulevard
Charlotte, NC 28216

SUBJ: Consent Agreement and Consent Order for Compliance No. CWA-04-2007-4750
Charlotte-Mecklenburg Utilities

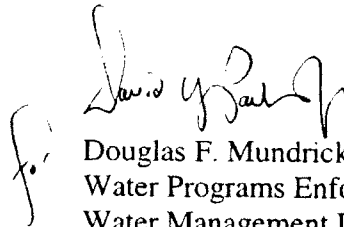
Dear Mr. Bean:

Pursuant to Section 309(a) of the Clean Water Act (the Act or CWA), 33 U.S.C. § 1319(a), as amended, the Director, Water Management Division, Region 4, United States Environmental Protection Agency (EPA), has determined that the Charlotte-Mecklenburg Utilities is in violation of Section 301 of the Act, 33 U.S.C. § 1311. As a result, the Director has issued the enclosed Section 309(a) Consent Agreement and Consent Order for Compliance (Order).

This Order does not replace, modify or eliminate any other requirement of the Act. Notwithstanding the issuance of this Section 309(a) Order, the EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the Act, 33 U.S.C. §§ 1319(d) or 1319(g), for the violations cited in this Order and for any other violation of the Act. Violations of the Act, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or a Section 309(a) Order, remain subject to a civil penalty of up to \$27,500 per day for each violation pursuant to Sections 309(d) or 309(g) of the Act, 33 U.S.C. §§ 1319(d) or 1319(g). Such violations of the Act may also be subject to criminal action.

Should you have any questions concerning the enclosed Order, please contact Mr. John Harkins at (404) 562-9758, or at the address on the letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick". To the left of the signature is a small, stylized mark that looks like a lowercase "f" with a dot.

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

1. Consent Agreement and Consent Order for Compliance

cc: Mr. Alan W. Klimek, North Carolina Department
of Environment and Natural Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

February 27, 2007

CERTIFIED MAIL 7005 3110 0003 6266 0059
RETURN RECEIPT REQUESTED

Mr. Alan W. Klimek, Director
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617

SUBJ: Consent Agreement and Consent Order for Compliance
Docket No. CWA-04-2007-4750
Charlotte-Mecklenburg Utilities

Dear Mr. Klimek:

Pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), respectively, I have determined that the above referenced facility is in violation of the CWA. As a result, I have issued a Consent Agreement and Consent Order for Compliance, a copy of which is enclosed for your reference. The Order is presently being served.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Giattina".

James D. Giattina, Director
Water Management Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	
CITY OF CHARLOTTE, NORTH CAROLINA)	ADMINISTRATIVE ORDER
)	ON CONSENT
)	
)	Docket No. CWA-04-2007-4750
PROCEEDING UNDER SECTION)	
309(a) of the Clean Water Act,)	
33 U.S.C. § 1319(a))	
)	

WHEREAS, on November 1, 1999, the United States Environmental Protection Agency ("EPA") sent a letter to the City of Charlotte, North Carolina acting by and through one of its municipal departments, the Charlotte-Mecklenburg Utilities (hereinafter referred to as "CMU"), inviting CMU to participate in the EPA Region 4 Management, Operation and Maintenance ("MOM") Programs Project ("MOM Project"); and,

WHEREAS, on March 9, 2000, EPA held a watershed meeting in Charlotte to explain the MOM Project to CMU and other invitees and to solicit their participation in the MOM Project; and,

WHEREAS, CMU attended the watershed meeting and informed EPA, by letter dated March 13, 2000, that it would participate in the MOM Project; and,

WHEREAS, CMU participated in the MOM Project by conducting a voluntary, good faith, self-assessment of its sewerage infrastructure MOM Programs; and,

WHEREAS, on October 30, 2000, CMU submitted to EPA the self-assessment report which disclosed Clean Water Act ("CWA") and permit violations.

STATUTORY AUTHORITY

NOW THEREFORE, the following **FINDINGS OF FACT and LAW** are made and this **ADMINISTRATIVE ORDER ON CONSENT ("ORDER")** is issued pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the CWA, 33 U.S.C. §1319(a), as amended, which has been delegated to the Regional Administrator, EPA Region 4, and re-delegated by the Regional Administrator to the Director of the Water Management Division. EPA has notified the State of North Carolina Department of Environment and Natural Resources ("DENR") of this Order.

FINDINGS OF FACTS AND LAW

Upon Consent of the parties by their attorneys and/or authorized officials, the parties stipulate and the Director finds:

1. To accomplish the objective of the CWA, as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into "Waters of the United States," except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. CMU is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to its requirements.
3. CMU owns and operates Publicly Owned Treatment Works ("POTW"), including five (5) Wastewater Treatment Plants ("WWTP") and their associated sanitary sewage collection systems

("Collection Systems"), which have been issued NPDES permits (the "NPDES Permits") by DENR as follows:

a. Sugar Creek WWTP, located at 5301 Closeburn Road, Charlotte, NC 28216, which operates under NPDES Permit Number NC0024937 and discharges pollutants as a point source into Sugar Creek, a "Water of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

b. Irwin Creek WWTP, located at 4000 Westmont Drive, Charlotte, NC 28210, which operates under NPDES Permit Number NC0024945 and discharges pollutants as a point source into Irwin Creek, a "Water of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

c. Mallard Creek WWTP, located at 12400 US Highway 29 North, Charlotte, NC 28262, which operates under NPDES Permit Number NC0030210 and discharges pollutants as a point source into Mallard Creek, a "Water of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

d. McAlpine Creek WWTP, located at US Highway 521 South, Charlotte, NC 28202, which operates under NPDES Permit Number NC0024970 and discharges pollutants as a point source into McAlpine Creek, a "Water of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

e. McDowell Creek WWTP, located at 4901 Neck Road, Huntersville, NC 28078, which operates under NPDES Permit Number NC0036277 and discharges pollutants as a point source into McDowell Creek, a "Water of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

4. DENR has also issued to CMU a North Carolina system-wide wastewater collection system permit number WQCS00001, dated May 12, 2005, pursuant to 15A NCAC 2H .0218 and which shall be renewed every five (5) years (the “State Collection System Permit”).

5. The NPDES Permits include a requirement, Part II., Section C., Paragraph 2., to properly operate and maintain the POTWs, including the WWTPs and Collection Systems which transports wastewater to the WWTPs.

6. EPA alleges that CMU has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in that CMU has discharged untreated sanitary sewage containing pollutants to “Waters of the United States” at locations not authorized by an NPDES permit.

7. EPA alleges that CMU has violated Part II., Section C., Paragraph 2. of its NPDES Permits by failing to properly operate and maintain the Collection Systems resulting in sanitary sewage overflows (“SSOs”).

8. While neither admitting nor denying these alleged violations and findings, CMU voluntarily and in good faith consents to the requirements of this Order in an effort to eliminate and decrease the likelihood of SSOs including discharges of sanitary sewage to “Waters of the United States.”

WORK TO BE PERFORMED

Based on the above Findings of Fact and Law and pursuant to the authority of Sections 309(a) of the CWA, 33 U.S.C. § 1319(a), **THE DIRECTOR HEREBY ORDERS AND CMU HEREBY CONSENTS TO THE FOLLOWING:**

9. Management Programs

a. Continuing Collection System Evaluation and Rehabilitation Program

CMU shall continue refinement and implementation of its on-going Collection System Evaluation and Rehabilitation Program for the term of this Order. This Program utilizes a “find and fix” approach that combines inspection, repair and rehabilitation activities to prioritized sewersheds to prevent SSOs. Within twelve (12) months of the Effective Date of this Order, CMU shall review, evaluate, refine, and document the processes within this Program used to:

- i. Prioritize sewersheds where rehabilitation work will be performed;
- ii. Conduct sewer flow monitoring to support engineering analysis;
- iii. Conduct inspections of manholes, sewer lines, and private service laterals within the prioritized rehabilitation areas;
- iv. Prioritize defects identified in iii. above and expeditiously implement rehabilitation or repair of high priority defects of manholes, sewer lines, and service lateral connections found by inspections described in iii. above to be defective;
- v. Identify sewer lift stations and force mains that need rehabilitation due to capacity, mechanical, or other reasons; and
- vi. Prioritize and implement rehabilitation of lift stations and force mains identified in v. above.

The documentation for the items above shall include schedules for implementation, written procedures and performance goals for conducting the activities described above (e.g., flow monitoring) taking into consideration such factors as: location and nature of customer complaints; results of flow and rainfall monitoring; location and nature of SSOs; lift station maintenance records and pump run times; field crew activities including routine inspections; inventory and effectiveness of sewer rehabilitation completed; and other sewer assessments. This documentation shall include,

where appropriate: quality assurance/quality control standards; inspection procedures and standards including required certifications; standard forms and reports; an information management process including appropriate mapping requirements; and provisions for conducting related activities such as closed circuit television inspections, sewer cleaning, flow monitoring. Except as otherwise provided in this Order, the work required in this Paragraph 9.a shall be performed consistent with accepted industry standards, appropriate sections of *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994, and applicable State regulations and standards.

CMU shall notify EPA and DENR when documentation of each of the items above has been completed and shall maintain the documentation available for review by EPA and DENR. CMU may change or modify any of these processes at any time by revising the documentation and notifying EPA and DENR within ninety (90) days of the change(s).

CMU shall maintain records of sewer manholes, sewer lines, private service laterals, lift stations, and force mains rehabilitated, and estimates of the effectiveness of completed rehabilitation. These records shall be consistent with CMU's existing mapping and data management programs.

b. Capacity Assurance Program

i. Adequate Capacity Definitions

A. For purposes of CMU's Capacity Assurance Program, "adequate treatment capacity" means that the WWTP which will receive flow from newly authorized sewer service connection(s) or increased flows from existing sewer service connections will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A, at the time the WWTP receives the flow from the newly authorized sewer service connection(s) or increased flows from existing

sewer service connections, and the flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into CMU's Collection Systems. Adequate treatment capacity shall be based on actual flow measured at the WWTP plus those flows CMU has committed to accept from new or existing connections that have not been activated and are therefore not contributing flow to the WWTP. Once new service connections or increases in existing connections are activated, flow from these new and existing connections shall become part of the actual flow and shall no longer be included in the total committed, non-contributing total.

B. For purposes of CMU's Capacity Assurance Program, "adequate transmission capacity" means that each pump station through which all flow from the newly authorized sewer service connection(s) or increased flows from existing sewer service connections passes to the WWTP receiving such flow can transmit the existing peak flow passing through the pump station plus the additional peak flow predicted to occur from the newly authorized sewer service connection(s) or increased flows from existing sewer connections, and the additional peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into CMU's Collection Systems. Adequate transmission capacity shall be based on actual flow plus those flows CMU has committed to accept from new or existing connections that have not been activated and are therefore not contributing flow to the Collection System. Once new service connections or increases in existing connections are activated, flow from these new and existing connections shall become part of the actual flow and shall no longer be included in the total committed, non-contributing total.

C. For purposes of CMU's Capacity Assurance Program, "adequate collection capacity" shall mean that each gravity sewer line through which all flow from the newly authorized sewer service connection(s) or increased flows from existing sewer connections passes to the WWTP

receiving such flow can carry the existing peak flow passing through the gravity sewer line plus the additional peak flow predicted to occur from the newly authorized sewer service connection(s) or increased flows from existing sewer connections, and the additional peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into CMU's Collection Systems. Adequate collection capacity shall be based on actual flow plus those flows CMU has committed to accept from new or existing connections that have not been activated and are therefore not contributing flow to the Collection System. Once new service connections or increases in existing connections are activated, flow from these new and existing connections shall become part of the actual flow and shall no longer be included in the total committed, non-contributing total.

ii. Capacity Assurance Program

Within twelve (12) months of the Effective Date of this Order, CMU shall develop and submit, for EPA review and comment, a Capacity Assurance Program, including a schedule of implementation, as described in this Paragraph 9.b. Within four (4) months of the date of receipt of EPA comments, CMU shall address EPA's comments, modify the Capacity Assurance Program accordingly, and submit the program to EPA for final approval. If necessary, CMU shall, within sixty (60) days of the date of receipt of EPA comments, meet with EPA to discuss EPA's comments and resolve any issues with those comments. Upon receipt of EPA's final approval of the Capacity Assurance Program, CMU will initiate implementation of the approved Capacity Assurance Program in accordance with the approved schedule and thereafter have program and implementation documentation available for on-site review by EPA. It is understood that CMU will implement the Capacity Assurance Program incrementally according to the schedule approved by EPA along with the Capacity Assurance Program. The implementation schedule will follow CMU's development and

implementation of tools and processes integral to corresponding elements of the Capacity Assurance Program. No criteria contained in the Capacity Assurance Program shall be construed as setting standards for the ultimate design or rehabilitation of CMU's Collection Systems.

The Capacity Assurance Program to be developed by CMU shall contain the following components:

- i. Description of processes and methods to be used by CMU to determine adequate collection, transmission and treatment capacity;
- ii. Description of processes and methods to be used by CMU to evaluate the impact(s) of projected flows on adequate collection, transmission and treatment capacity;
- iii. Description of protocols (such as sources and accuracy of data to be used, basis of flow estimation / projections, tools to be used, etc.) to be used by CMU for implementation of the Capacity Assurance Program;
- iv. Description of process for certification of adequate collection, transmission and treatment capacity by a registered professional engineer before new service connections or increases in flow from existing sewer connections are authorized;
- v. Description of process for integrating applications for new service connections or increased flows from existing with the Capacity Assurance Program; and,
- vi. Description of an information management system to be used to monitor and track adequate collection, transmission and treatment capacity.

10. Operation Programs: Grease Control Program

Within six (6) months of the Effective Date of this Order, CMU shall review, evaluate, revise and submit for EPA review and comment its Grease Control Program, including a schedule of

implementation not to exceed two (2) years from the Effective Date of this Order, as described in this Paragraph 10. Within two (2) months of the date of receipt of EPA's comments, CMU shall modify the Grease Control Program in accordance with EPA's comments and resubmit the program to EPA. If necessary, CMU shall, within forty-five (45) days of the date of receipt of EPA comments, meet with EPA to discuss EPA's comments and resolve any issues with those comments. Upon receipt of EPA's approval of the Grease Control Program, CMU shall initiate implementation of the Grease Control Program in accordance with the approved schedule and thereafter have program and implementation documentation available for EPA and DENR on-site review.

The Grease Control Program shall contain the following elements:

- a. legal authority to control the discharge of grease into CMU's Collection System by implementing the Grease Control Program elements contained in the following subparagraphs, including an assessment of the feasibility of instituting a permit program;
- b. identification of accepted devices to control the discharge of grease into CMU's Collection System;
- c. establishment of standards for the design and construction of grease control devices including standards for capacity and accessibility, site map, design documents and as-built drawings;
- d. establishment of grease control device management, operation and maintenance standards, or best management practices, that address on-site record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal;

- e. establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that grease control devices are constructed in accordance with established design and construction standards;
- f. establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that grease control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices;
- g. establishment of an enforcement program to ensure compliance with the Grease Control Program;
- h. establishment of a compliance assistance program to facilitate training of grease generators and their employees;
- i. establishment of a public education program directed at reducing the amount of grease entering CMU's Collection System from private residences;
- j. establishment of staffing and equipment requirements to ensure effective implementation of the Grease Control Program; and,
- k. establishment of performance indicators to be used by CMU to measure the effectiveness of the Grease Control Program.

11. Maintenance Programs

CMU shall review, evaluate, refine, and continue on-going implementation of its Maintenance Programs to improve the performance of the Collection System. Within twelve (12) months of the

Effective Date of this Order, CMU shall develop documentation of its Maintenance Programs, notify EPA and DENR that the documentation is complete, and maintain the documentation available for review by EPA and DENR. Such documentation shall include the following components:

- a. Description of routine gravity sewer cleaning programs including those designed to remove debris and roots;
- b. Description of routine programs to maintain access to off-street sewer facilities; and,
- c. Description of routine inspection programs to identify, prioritize, and repair deficiencies discovered in gravity sewer lines, manholes, lift stations, and force mains.

For each component a. through c. above, the documentation shall include schedules for implementation, written procedures and performance goals for conducting the maintenance activities, how needs are identified and prioritized, work management procedures, and personnel and equipment allocated. CMU may modify any of the programs described in the Maintenance Programs at any time. When modifications are made, CMU shall revise the program documentation and notify EPA and DENR within ninety (90) days of the modifications.

12. Capital Improvement Projects

a. Identified Capital Improvement Projects

CMU shall complete the capital improvement projects shown in Exhibit A in accordance with the schedule shown therein, unless otherwise agreed to in writing by the parties. The completion of these projects shall be enforceable under this Order.

b. Additional Capital Improvement Projects

Within twelve (12) months of the Effective Date of this Order, CMU shall review and evaluate all SSOs which occurred in CMU's Collection Systems within its fiscal years 2005 and

2006. For those SSOs which are not expected to be eliminated by the capital improvement projects shown in Exhibit A or through enhanced MOM programs, CMU shall submit for EPA review and comment a description of any necessary additional capital improvement projects, including an implementation schedule for those improvements, to eliminate these SSOs. The schedule shall provide for all of these additional capital improvement projects, if any, to be initiated within five (5) years from the Effective Date of this Order.

13. Continued Implementation of MOM Programs

CMU shall continue to implement all of its other MOM programs, not specifically referenced in this Order, which are necessary to comply with the State Collection System Permit or are needed to reduce or eliminate SSOs. CMU shall provide adequate funding and resources for the development and implementation of all of its MOM programs including those set forth in this Order. Within two (2) years of the Effective Date of this Order, CMU shall: develop, review and evaluate, as necessary to improve Collection System performance, a Plan for Continuous Improvement for all its MOM programs, including a schedule to implement necessary revisions not to exceed four (4) years from the Effective Date of this Order; notify EPA and DENR that the development, review and evaluation has been completed; initiate implementation of the revisions accordingly; and, have the Plan for Continuous Improvement and its implementation documentation available for EPA and DENR on-site review.

DOCUMENTATION AND REPORT SUBMITTAL

14. CMU shall submit to EPA and DENR written semi-annual progress reports (Semi-Annual Reports) that include:

- a. a description of the actions which have been taken toward achieving compliance with this Order during the period since submittal of the previous Semi-Annual Report (and in the case of the first Semi-Annual Report, since the Effective Date of this Order);
- b. an assessment of the effectiveness of such actions in preventing SSOs;
- c. a list of such SSOs that occurred during the period since submittal of the previous Semi-Annual Report (and in the case of the first Semi-Annual Report, since the Effective Date of this Order);
- d. an analysis of the cause of each SSO;
- e. a description of CMU's plan to address and prevent such SSOs from occurring in the future;
- f. the status of all capital improvement projects provided for in Paragraph 12 of this Order including a description of any capital improvements completed during the period since submittal of the previous Semi-Annual Report (and in the case of the first Semi-Annual Report, since the Effective Date of this Order); and
- g. a description of any capital improvements expected to be completed during the following six (6) month period.

CMU shall begin to submit these Semi-Annual Reports to EPA and DENR on January 31, 2007, for the period from the Effective date of this Order to December 31, 2006, and shall continue to submit such Semi-Annual Reports at the end of each July (for the period from January 1 through June 30) and each January (for the period from July 1 to December 31) thereafter until the submission of the Final Report as set forth below.

15. All documentation and reports required to be submitted under this Order shall contain the

following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

16. The reports and certification statement shall be signed by a principal executive officer, a ranking elected official, or a duly authorized representative as specified by 40 CFR §§ 122.22(b)(2) and 122.22(d).

17. Documentation, reports and other correspondence sent by the parties to each other pursuant to this Order shall be sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service, to the following addressees:

As to EPA:

Chief, Water Programs Enforcement Branch
Water Management Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
ATTN: John Harkins

As to DENR:

Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617
ATTN: Jeffrey Poupart

As to CMU:

Barry M. Gullet, P.E.
Deputy Director
Charlotte-Mecklenberg Utilities
5100 Brookshire Boulevard
Charlotte, North Carolina 282216

18. Notifications to, or communications with, EPA and DENR by CMU shall be deemed submitted on the date they are postmarked and sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service. Notifications to, or communications with, CMU by EPA shall be deemed received three (3) days after the date they are postmarked and sent by registered mail, certified mail (return receipt requested), or deposited with an overnight mail/delivery service.

19. When circumstances are occurring, or have occurred, which may delay the completion of any requirement of this Order, whether or not arising from causes beyond the control of CMU, including its consultants and contractors, despite CMU's best efforts to fulfill the requirement, CMU shall so notify EPA, in writing, within fifteen (15) days after CMU learns, or in the exercise of reasonable diligence under the circumstances should have learned, of the delay or anticipated delay. The notice shall describe in detail the basis for CMU's contention that it experienced a delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify EPA shall constitute a waiver by CMU of any claim for delay under this paragraph as to the event in question. If EPA finds that a delay in performance is or was arising from causes beyond the control of CMU, including its consultants and contractors, EPA may

extend the time for performance, in writing, for a period to compensate for the delay resulting from such causes.

COMPLIANCE WITH THIS ORDER

20. CMU's compliance with this Order does not necessarily constitute compliance with the provisions of the CWA, CMU's NPDES Permits or the State Collection System Permit. CMU shall remain solely responsible for compliance with the terms of this Order, the CWA, the NPDES Permits and the State Collection System Permit. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA, including criminal punishment as provided in Section 309 of the CWA, 33 U.S.C. § 1319. This Order does not waive or modify or in any way relieve CMU of its obligations to comply with the NPDES Permits, the State Collection System Permit, the CWA or any other local, state, or Federal law.

FINAL REPORT AND TERMINATION OF THIS ORDER

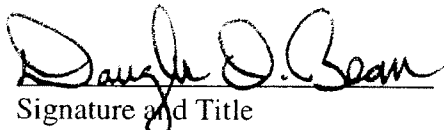
21. Within ninety (90) days after CMU has satisfied the terms of this Order by (a) establishing, and successfully implementing for a period of twelve (12) months, all the MOM programs and other requirements in this Order as set forth in Paragraphs 9 through 11, (b) completing construction of all the capital improvement projects as set forth in Paragraph 12.a, and (c) initiating construction of all the capital improvement projects as set forth in Paragraph 12.b, CMU shall submit for EPA review and approval a final report ("Final Report") that includes a description of all of the actions which have been taken toward achieving compliance with this Order, an assessment of the effectiveness of such actions in preventing SSOs, and an analysis of whether additional actions beyond the scope of this Order are necessary to further prevent such SSOs. EPA shall use its best

efforts to expeditiously review the Final Report. If EPA determines that CMU has provided a satisfactory Final Report as required above and has satisfied the terms of this Order as set forth above, EPA will provide notice to CMU, and this Order shall be deemed terminated. If EPA determines that the Final Report is not satisfactory or that CMU has not satisfied any term of this Order as set forth above, EPA will notify CMU and provide a list of the deficiencies which may require CMU to modify a MOM program as appropriate in order to correct a deficiency. In this event, CMU shall correct such deficiencies and shall submit a modified Final Report in accordance with the EPA notice. If necessary, CMU shall, within sixty (60) days of the date of receipt of EPA comments, meet with EPA to discuss EPA's comments and resolve any issues with those comments.

EFFECTIVE DATE

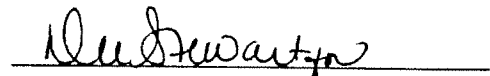
22. This Order is effective upon receipt by CMU of a fully executed Order.

FOR THE CITY OF CHARLOTTE


Signature and Title

Key Business Executive
Charlotte-Mecklenburg Utilities
September 26, 2006
Date

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**


James D. Giattina, Director
Water Management Division

February 13, 2007
Date

Exhibit A

Consolidated Pump Station at McAlpine WWTP

Identified Problem - Existing influent pump stations do not have adequate capacity to receive projected wet weather flow contributing to SSO's upstream of the WWTP.

Scope - Project consists of a new influent pump station at the McAlpine Wastewater Treatment Plant. The new station is designed to accept dry and wet-weather flow from the existing McAlpine outfall and the proposed McAlpine Relief sewer and pump that flow into the treatment process or on-site flow equalization facilities.

Schedule – Construction started in October, 2004 with completion by June 30, 2008.

Irwin Creek Relief Sewer, Phase II

Identified Problem - Existing Irwin Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

Scope – Project consists of approximately 10,800 linear feet of sewer pipe ranging from 36" to 54" in diameter and parallels the existing the Irwin Creek Outfall. The project extends from the terminus of phase one just north of West Boulevard to just north of West Fifth Street.

Schedule – Construction started in December, 2004 with completion by September 30, 2008.

Long Creek Outfall, Phase I & II

Identified Problem - Existing Long Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

Scope – Project consists of approximately 40,700 linear feet of 42" to 54" sewer pipe and parallels the existing Long Creek Outfall. The project extends from the recently completed Long Creek Pump Station and Flow Equalization facility upstream to near Oakdale Road.

Schedule – Construction started in February, 2005 with completion by January 31, 2008.

Briar Creek Relief Sewer, Phase 1 and Pump Station

Identified Problem - The existing Briar Creek Outfall (trunk sewer) is not adequate to carry projected flows. Projected flows from the new relief sewer will be greater than the existing influent pump station can convey. These bottlenecks could cause wet weather SSO's upstream of the Sugar Creek WWTP.

Scope – Project consists of a new influent pump station at the Sugar Creek Wastewater Treatment Plant and approximately 23,000 linear feet of 60" to 72" sewer pipe. The pump station is designed to accept dry and wet-weather flow from the existing sewer outfalls and the proposed Briar Creek Relief sewer. The relief sewer will extend from the new pump station up to near Randolph Road.

Schedule – Construction on the pump station started in April. The relief sewer is currently in final design and easement acquisition. The relief sewer construction is expected to begin in July 2007. The project shall be completed by November 30, 2010.

McAlpine Relief Sewer, Phase 1

Identified Problem - The existing pipeline is not adequate to carry projected flows which could result in wet weather SSO's.

Scope – Project consists of 12,900 linear feet of 78" diameter sewer line. The relief sewer will extend from the new McAlpine Influent Pump Station up to the confluence of Four Mile Creek.

Schedule - The project is currently in final design and easement acquisition. Construction is projected to begin in July, 2007 with completion by November 30, 2010.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

CITY OF CHARLOTTE,
NORTH CAROLINA

Respondent.

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)
) Docket No. CWA-04-2007-4500(b)
)

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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has delegated this authority to the Director of the Water Management Division, ("Complainant").

II. Allegations

3. At all times relevant to this action, the City of Charlotte, North Carolina, acting by and through the Charlotte-Mecklenburg Utilities ("Respondent"), was a municipality existing under the laws of the State of North Carolina and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated publicly owned treatment works, including five (5) wastewater treatment plants and their associated sanitary sewage collection systems ("Collection Systems"), which have been issued National Pollutant Discharge Elimination System ("NPDES") permits (the "NPDES Permits") by the North Carolina Department of Environment and Natural Resources ("DENR") as follows:

a. Sugar Creek WWTP, located at 5301 Closeburn Road, Charlotte, NC 28216, which operates under NPDES Permit Number NC0024937 and discharges pollutants as a point source into Sugar Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

b. Irwin Creek WWTP, located at 4000 Westmont Drive, Charlotte, NC 28210, which operates under NPDES Permit Number NC0024945 and discharges pollutants as a point source into Irwin Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

c. Mallard Creek WWTP, located at 12400 US Highway 29 North, Charlotte, NC 28262, which operates under NPDES Permit Number NC0030210 and discharges pollutants as a point source into Mallard Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

d. McAlpine Creek WWTP, located at US Highway 521 South, Charlotte, NC 28202, which operates under NPDES Permit Number NC0024970 and discharges pollutants as a point source into McAlpine Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

e. McDowell Creek WWTP, located at 4901 Neck Road, Huntersville, NC 28078, which operates under NPDES Permit Number NC0036277 and discharges pollutants as a point source into McDowell Creek, a water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7).

5. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters), Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. EPA alleges that Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging untreated sanitary sewage containing pollutants to waters of the United States at locations not authorized by an NPDES permit and by failing to properly operate and maintain the Collection Systems as required by Part II., Section C., Paragraph 2. of the NPDES Permits resulting in sanitary sewage overflows ("SSOs") during the five (5)-year period immediately preceding the effective date of this Consent Agreement.

III. Stipulations and Findings

7. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

8. For the purposes of this CA/FO, Respondent neither admits nor denies the factual allegations set out above.

9. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

10. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

11. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

12. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

13. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

14. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R Part 19, and considering the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that One Hundred Twenty-Five Thousand Dollars (\$125,000) is an appropriate civil penalty to settle this action.

15. Respondent consents to the issuance of this CA/FO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEP.

16. Respondent shall submit payment of the penalty specified in the preceding paragraph within sixty (60) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

17. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency - Region 4
Water Management Division
Water Programs Enforcement Branch
Gulf Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

18. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

19. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

20. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review, except as otherwise expressly provided herein.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. Respondent shall complete the SEP described in Appendix A in accordance with the schedule included therein which the parties agree is intended to secure significant environmental or public health protection and improvements.

22. The total expenditure for the SEP shall not be less than Three Hundred Thousand Dollars (\$300,000). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

23. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

24. Respondent shall submit a SEP Completion Report within forty-eight (48) months after the effective date of this CA/FO to Chief, Water Programs Enforcement Branch, U.S. Environmental Protection Agency - Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

25. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

26. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CA/FO and shall provide the documentation of any such underlying research and data to EPA not more than seven (7) days after a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

27. After receipt of the SEP Completion Report described in Paragraph 24 above, EPA will notify Respondent, in writing, (a) of any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; (b) that EPA has concluded that the SEP has been completed satisfactorily, or (c)

that EPA has determined that the SEP has not been completed satisfactorily and that it is seeking, or may seek, stipulated penalties in accordance with Paragraph 29 herein.

28. If EPA elects to exercise option (a) in Paragraph 27 above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent on the adequacy of the completion of the SEP, which decision shall be final and binding upon Respondent, except as otherwise expressly provided herein. In the event the SEP is not completed as contemplated herein, as determined by EPA, EPA may seek stipulated penalties in accordance with Paragraph 29 herein.

29. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP as described in Appendix A and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as required in Paragraph 22 herein, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) below, if the SEP is not completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of Seventy-Five Thousand Dollars (\$75,000).

b. If the SEP is not completed satisfactorily pursuant to this CA/FO, but EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certifies, with supporting documentation, that at least ninety percent (90%) of the amount of the money required to be spent in Paragraph 22 herein was expended on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

c. If the SEP is completed satisfactorily in accordance with Appendix A, but Respondent spent less than ninety percent (90%) of the amount of money required to be spent in Paragraph 22 herein on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Seven Thousand Five Hundred Dollars (\$7,500).

d. If the SEP is completed pursuant to this CA/FO, and Respondent spent at least ninety percent (90%) of the amount of money required to be spent in Paragraph 22 herein on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

e. For failure to submit the SEP Completion Report required by Paragraph 24 above, Respondent shall pay a stipulated penalty in the amount of One Thousand Dollars (\$1,000) for each day after the due date until the report is submitted.

30. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the reasonable discretion of EPA.

31. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 16 and 17 above. Interest and late charges shall be paid as stated in Paragraph 19 above. If the Respondent fails to pay such amount as EPA asserts that Respondent owes pursuant to this CA/FO based upon a determination by EPA that Respondent failed to complete or to substantially complete the SEP to the satisfaction of EPA and if EPA initiates an action to collect such amount (including stipulated penalties and all additional interest, charges, penalties and other amounts as described in Part IV of this CA/FO), it shall be presumed in such action that such determination by the EPA is reasonable; provided that, Respondent may raise as a defense in such action that such determination by EPA was arbitrary and capricious and therefore not a binding determination upon Respondent. If such defense is raised, Respondent shall have the burden of proving that EPA's determination was arbitrary and capricious and that the SEP was completed or substantially completed satisfactorily by Respondent. In such action, the provisions of this Paragraph shall be stipulated as admissible evidence and shall be binding upon EPA and Respondent in all regards.

32. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

33. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes.

VI. General Provisions

34. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA

35. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

36. Except as otherwise set forth herein, this CA/FO constitutes a settlement by EPA and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

37. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

38. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

39. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

40. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

41. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

William B. Bush, Jr.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9538

For Respondent:

H. Michael Boyd
Senior Deputy City Attorney
Office of the City Attorney
600 East Fourth Street
Charlotte, North Carolina 28202
(704) 336-2254

42. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

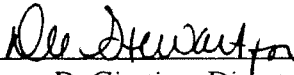
43. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VII. Effective Date

44. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


James D. Giattina, Director
Water Management Division
U.S. EPA, Region 4

Date: February 13, 2007

For RESPONDENT, CITY OF CHARLOTTE, NORTH CAROLINA:


[TYPE IN NAME OF INDIVIDUAL], [TITLE]

Date: September 26, 2006

Douglas O. Bean
Key Business Executive
Charlotte-Mecklenburg Utilities

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

CITY OF CHARLOTTE,
NORTH CAROLINA

Respondent.

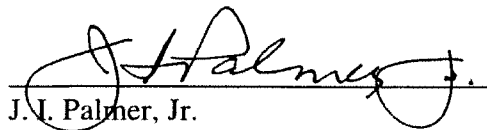
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) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
) **Docket No. CWA-04-2007-4500(b)**
)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: FEB 16 2007


J.I. Palmer, Jr.
Regional Administrator
U.S. EPA, Region 4

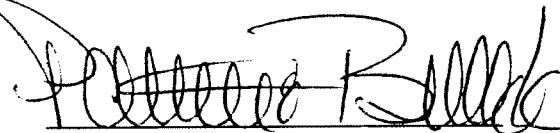
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of the City of Charlotte, North Carolina, Docket No. CWA-04-2007-4500(b) (filed with the Regional Hearing Clerk on 2-27-07, 2007) was served on 2-27, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: William B. Bush, Jr.
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: H. Michael Boyd
Senior Deputy City Attorney
Office of the City Attorney
600 East Fourth Street
Charlotte, NC 28202

Alan W. Klimek, Director
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Within 180 days of the effective date of this CA/FO, Respondent shall provide notice to EPA in care of Chief, Water Programs Enforcement Branch, U.S. Environmental Protection Agency - Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, indicating which one of the two below options Respondent has chosen to implement as a SEP pursuant to this CA/FO.

Option A – Private Lateral Repair for Low and Moderate Income Customers

Purpose

If Option A is chosen by Respondent as the SEP pursuant to the CA/FO, the purpose of this project is to provide a mechanism for repairing, rehabilitating, or replacing low and moderate income individuals' private, residential sanitary sewer service laterals. This will result in a reduction of extraneous flows entering the sanitary sewer system through defective private residential laterals that would not be achieved otherwise. Defective laterals allow rain and/or groundwater to enter the public sewer system through cracks, fractures, broken pipes, faulty or improper connections and joints, etc. Reduction of these flows into the sewer system will benefit the environment by reducing the likelihood and the volume of SSOs.

Scope

Respondent shall perform the following tasks:

- Identify one or more areas of the Collection Systems that need sewer system rehabilitation or where sewer rehabilitation has been recently completed and that have low and moderate income customers;
- Conduct inspections to locate defective private residential service laterals within these areas;
- Develop low and moderate income level qualifications for property owners to become eligible for repair work on their private service laterals under this SEP using 2000 census information;
- Establish and implement a process using contractors, plumbers, and/or other governmental or non-governmental agencies to repair, rehabilitate, or replace those eligible low and moderate income property owner's private service laterals that are found to have significant defects that could negatively impact the public sanitary sewer system (provided, however, Respondent will not be required to perform work on private property where the property owner will not agree to reasonable right of entry conditions or where estimated repair costs are not commensurate with potential benefits derived from the repair);
- Repair defective private service laterals between the service connection to a public sewer main and a point approximately 5' outside the building foundation;

- Maintain records of disbursement of funds for work under this SEP; and
- Monitor, track and periodically report SEP progress to EPA.

Cost

Respondent shall spend at least \$300,000 toward inspection, repair, rehabilitation, or replacement of private service laterals pursuant to this SEP. Respondent's staff costs and administration costs will not be counted against this total. Costs of professional consulting services, contractors, and materials will be included in the total cost, including costs associated with restoring private property disturbed by the work on the service lateral to pre-construction conditions.

Schedule

Work on the SEP will be completed within 36 months after the effective date of this CA/FO.

Option B – Purchase Land for Water Quality Improvement

Purpose

If Option B is chosen by Respondent as the SEP pursuant to the CA/FO, the purpose of this project will be to restore, protect, and enhance water quality in McDowell Creek by acquiring land adjacent to McDowell Creek, placing perpetual use restrictions on such land and then donating such land to Mecklenburg County to be held for purposes of furthering the goals of the McDowell Creek Watershed Management Plan.

The McDowell Creek watershed is located in the northwestern section of Mecklenburg County and is within the service area covered by Respondent's Collection Systems. The watershed includes a large portion of Town of Huntersville and the southern portion of the Town of Cornelius. McDowell Creek flows into Mountain Island Lake at McDowell Creek Cove upstream of Respondent's drinking water intake. The total area of the watershed is approximately 28.5 square miles (20,800 acres) and is among the most rapidly growing areas in the State of North Carolina. Impacts resulting from urban runoff related to land development activities have resulted in significant declines in water quality conditions in McDowell Creek and McDowell Creek Cove. In February 2003, the Town of Huntersville adopted one of the more stringent post-construction ordinances in the State, which requires the use of low impact development (LID) techniques to reduce non-point source pollutants from new development and redevelopment. The goal of this ordinance is to prevent increased water quality degradation in McDowell Creek and McDowell Creek Cove as the watershed continues to develop. Mecklenburg County has partnered with the Town of Huntersville in its efforts to "save McDowell Creek" by installing retrofit BMPs in the McDowell Creek watershed to reduce existing pollutant loads from developed areas. These efforts are supported by a water quality model developed for McDowell Creek by Mecklenburg County in 2002

and an extensive water quality monitoring program designed to measure the success of restoration efforts. The entire effort is summarized in the McDowell Creek Watershed Management Plan completed in December 2005. The Plan contains specific water quality targets for the watershed and describes the techniques that will be used to achieve these targets by 2020. A copy of the McDowell Creek Watershed Management Plan is available at the following website: <http://stormwater.charmeck.org> (select: *Storm Water Projects*; select: *Restoration and Water Quality Projects*; select: *McDowell Creek Watershed*; and select: *view the plan*).

One of the biggest challenge associated with the implementation of the McDowell Creek Watershed Management Plan is securing the funds necessary to acquire land that would be subject to the goals of the Plan. This SEP would address that challenge.

Scope

Respondent shall purchase a high priority parcel or parcels of land, consistent with the criteria set forth in the McDowell Creek Watershed Management Plan, and place conservation easements and/or other restrictions on such land to ensure that it will be used in perpetuity to restore, protect, and enhance the water quality in McDowell Creek consistent with the McDowell Creek Watershed Management Plan. The primary purpose of such easements and/or restrictions will be to reduce and/or prevent erosion and non-point source pollution from entering McDowell Creek by setting aside land in perpetuity for the protection of McDowell Creek such that the adjacent portion of McDowell Creek may be maintained in, or be restored to, its natural condition. Respondent shall then transfer ownership of the land subject to these restrictions to Mecklenburg County to be held for purposes of furthering the goals of the McDowell Creek Watershed Management Plan. Construction of specific stormwater BMP's by Mecklenburg County pursuant to the McDowell Creek Watershed Management Plan is outside the scope of this SEP.

Cost

Respondent shall spend at least \$300,000 toward the purchase of land to be made subject to the purposes of this SEP and the McDowell Creek Watershed Management Plan.

Schedule

Along with Respondent's notification to EPA that it has chosen Option B as the SEP to be completed pursuant to this CA/FO, Respondent shall submit to EPA for review and approval the conservation easement and/or other land use restrictions it intends to place on the land to be acquired for purposed of this SEP. Respondent shall complete this SEP within 36 months after the effective date of the Order.

Exhibit A

Consolidated Pump Station at McAlpine WWTP

Identified Problem - Existing influent pump stations do not have adequate capacity to receive projected wet weather flow contributing to SSO's upstream of the WWTP.

Scope - Project consists of a new influent pump station at the McAlpine Wastewater Treatment Plant. The new station is designed to accept dry and wet-weather flow from the existing McAlpine outfall and the proposed McAlpine Relief sewer and pump that flow into the treatment process or on-site flow equalization facilities.

Schedule – Construction started in October, 2004 with completion by June 30, 2008.

Irwin Creek Relief Sewer, Phase II

Identified Problem - Existing Irwin Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

Scope – Project consists of approximately 10,800 linear feet of sewer pipe ranging from 36" to 54" in diameter and parallels the existing the Irwin Creek Outfall. The project extends from the terminus of phase one just north of West Boulevard to just north of West Fifth Street.

Schedule – Construction started in December, 2004 with completion by September 30, 2008.

Long Creek Outfall, Phase I & II

Identified Problem - Existing Long Creek Outfall (trunk sewer) is not adequate to carry projected flow which could result in wet weather SSO's.

Scope – Project consists of approximately 40,700 linear feet of 42" to 54" sewer pipe and parallels the existing Long Creek Outfall. The project extends from the recently completed Long Creek Pump Station and Flow Equalization facility upstream to near Oakdale Road.

Schedule – Construction started in February, 2005 with completion by January 31, 2008.

Briar Creek Relief Sewer, Phase 1 and Pump Station

Identified Problem - The existing Briar Creek Outfall (trunk sewer) is not adequate to carry projected flows. Projected flows from the new relief sewer will be greater than the existing influent pump station can convey. These bottlenecks could cause wet weather SSO's upstream of the Sugar Creek WWTP.

Scope – Project consists of a new influent pump station at the Sugar Creek Wastewater Treatment Plant and approximately 23,000 linear feet of 60" to 72" sewer pipe. The pump station is designed to accept dry and wet-weather flow from the existing sewer outfalls and the proposed Briar Creek Relief sewer. The relief sewer will extend from the new pump station up to near Randolph Road.

Schedule – Construction on the pump station started in April. The relief sewer is currently in final design and easement acquisition. The relief sewer construction is expected to begin in July 2007. The project shall be completed by November 30, 2010.

McAlpine Relief Sewer, Phase 1

Identified Problem - The existing pipeline is not adequate to carry projected flows which could result in wet weather SSO's.

Scope – Project consists of 12,900 linear feet of 78" diameter sewer line. The relief sewer will extend from the new McAlpine Influent Pump Station up to the confluence of Four Mile Creek.

Schedule - The project is currently in final design and easement acquisition. Construction is projected to begin in July, 2007 with completion by November 30, 2010.

